



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Raymond Guimond, Robert Murdoch

Complainants

v.

State of New Hampshire & SEIU Local 1984

Respondents

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Case No. S-0429-1

Decision No. 2005-146

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

Raymond Guimond, Robert Murdoch, (hereinafter referred to as the "Complainants") filed an unfair labor practice complaint on September, 22, 2005 alleging that the State of New Hampshire (hereinafter referred to as the "State") and SEIU Local 1984 (hereinafter referred to as the "Union") have committed an unfair labor practice by allowing supervisors to become members of the same bargaining units comprised of employees over which they exercise supervisory authority involving the significant exercise of discretion in violation of RSA 273-A:8. The Complainants further assert that by allowing this integration of supervisory and non-supervisory employees into the same unit, a sixty percent (60%) threshold number was achieved by the Union permitting it to receive agency fees from non-union bargaining unit members pursuant to a previous provision in the CBA between the State and the Union. The Complainants request relief in the form of an order of the PELRB preventing the State from collecting the agency fee through payroll deduction and preventing the Union from receiving any such agency fees. The Complainants also request the PELRB to prevent either Respondent from taking any fees from employees in violation of RSA 275:48.

The respondent State filed its Answer on October 7, 2005 in which it indicated uniformly that it either lacked sufficient information with which to form a belief as to the Complaints' allegations and therefore denied them or that the Complainants' allegations called for a legal conclusion and therefore no reply was necessary. Without other representation, the State requests that the complaint be dismissed.

The respondent Union filed its Motion to Dismiss and Reply to Unfair Labor Practice on October 7, 2005. The bases of its Motion to Dismiss include: the failure of the Complainants' to state a succinct claim for which the PELRB has full jurisdiction to adjudicate; lack of ripeness of the

alleged cause of action; violation of the six-month limitations on actions filing requirement; failure of the Complainant's to allege a violation of RSA 273-A:5 (actions constituting improper labor practices); failure to exhaust administrative remedies because no grievance was filed by the Complainants in violation of RSA 273-A:6,I; and lack of standing of the Complainants to file the complaint. The Union further replies to the allegations of the Complainants by asserting that it has legitimately achieved a threshold membership level and entitled to the benefit bargained for in 1999 and embodied in Article 5.8.1 (e) of the parties CBA. Also, the Union points to modifications in the bargaining unit since 1977 that have occurred in the certification process of the PELRB. The Union also asserts that the PELRB has no jurisdiction regarding alleged violations of RSA 275. Lastly, it generally denies that it has committed or caused to be committed any improper labor practice.

The Complainants filed an Amendment to their initial complaint on October 11, 2005 adding an additional alleged violation of RSA 273-A:8 by the State and the Union for a failure to conduct separate votes among professional and non-professional employee members of a bargaining unit. The Complainants followed that first Amendment filing a second Amendment on October 19, 2005 adding a statutory reference to supplement the allegations contained in their previous filings.

The Complainants filed a Response to Motion to Dismiss on October 28, 2005 that was allowed by the PELRB as a timely filing by reason of an inadvertent misdirection of its Notice of Filing to an address not provided by the Complainants. On that same day, the Complainants filed what amounts to a request for an advisory opinion from the PELRB on interpretations of certain provisions of RSA 273-A relevant to their charges.

A pre-hearing conference was conducted at the offices of the PELRB on November 2, 2005 where all parties or their representatives were present.

PARTICIPATING REPRESENTATIVES

For the Complainants: Raymond Guimond and Robert Murdoch

For the State: Sara Willingham, Manager of Employee Relations
Ann Larney, Esq., Office of the Attorney General

For the Union: Lorri Hayes, Esquire

ISSUES FOR DETERMINATION BY THE PELRB

To be determined following the submission of particulars by the Complainants

WITNESSES

For the Complainant:

1. Sara Willingham, Manager of Employee Relations, State of NH
2. Gary Smith, President of SEA, SEIU Local 1984
3. Lt. Paul Cascio, Dept. of Corrections employee and SEA Member
4. Michael McAlister, Acting Director of Field Services, NH Dept. of Corrections

For the State:

1. Sara Willingham, Manager of Employee Relations, State of NH
2. Thomas Manning, former Director of Personnel
3. Karen Levchuk, Director of Personnel
4. Lisa Currier, Human Resources Director, NH Dept of Corrections

For the Union

1. Richard Molan, Esq., Chief Negotiator and Counsel

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

For the Complainant

1. Collective Bargaining Agreement
2. RSA 273 A:8

For the Union:

1. All State of New Hampshire current bargaining unit certifications
2. Original certification

For the State:

1. Personnel Reports
2. Listing of Job Positions characterized as "Supervisor"

All parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time to be set aside for this matter cannot yet be set pending the submission of particulars by the Complainants and a determination by the PELRB whether a separate day of hearing may become necessary to consider, among other matters, dispositive motions filed by the parties.

DECISION

1. The Complainants withdraw any claims within their complaint alleging violations of RSA 275:48 and the hearing officer dismisses any consideration of said allegations.
2. The Complainants, for purposes of these proceedings shall be deemed as those who have averred or sworn under oath to the charges that appear from the filings to date, namely Raymond Giumond and Robert Murdoch. This does not foreclose additional complainants from joining these proceedings if done in accordance with PELRB rules and filed in a timely fashion with appropriate notice to other parties.
3. The Complainants shall submit more "particulars" submitting additional facts or specific actions alleged to have been undertaken by either the State or the Union, or both, that the Complainants allege violate statutory or other rules within the jurisdiction of the PELRB. This documentary submission shall be filed with the PELRB on or before December 2, 2005.
4. Following the filing of the Complainants' additional specifications, the Respondents shall have fifteen days thereafter within which to file any amended answers.
5. The State shall begin a good faith effort to compile necessary information and produce a document that will indicate the total number of positions and their position titles included within the bargaining unit or units at issue in these proceedings and the total number of individuals employed in these positions.
6. The State shall begin a good faith effort to compile necessary information and produce a document that will indicate the employees from whom they withhold a so-called "agency fee."
7. The Union shall begin a good faith effort to compile necessary information and produce a document that will indicate the total number of positions and their position titles included within the bargaining unit or units at issue in these proceedings and the total number of individuals employed in these positions.
8. The Union shall begin a good faith effort to compile necessary information and produce a document that will indicate the number of employees, by position, that are dues paying members of the Union and others who are contributing a so-called "fair share" or agency fee.
9. The Parties shall confer to establish the date they deem relevant to their respective claims and defenses and which shall become the effective date for the data reported in the documents required in Paragraphs 4-8, above.
10. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

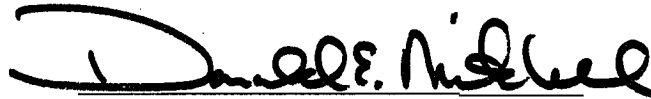
11. The parties shall file any additional preliminary, procedural or dispositive motions no later than January 8, 2006. Later filings of such pleadings shall be given strict scrutiny before being allowed.
12. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an additional preliminary hearing involving all parties will be held on:

January 25, 2006 @ 1:30 PM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 16th day of November, 2005.



Donald E. Mitchell, Esq.
Executive Director, Presiding Officer

Distribution:

Raymond Guimond
Robert Murdoch
Michael K. Brown, Esquire
Ann Larney, Esquire
Sara Willingham, Manager Employee Relations
Lorri Hayes, Esquire